IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.MC.No. 749 of 2007()

CC.637/2006 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONER: 4TH ACCUSED

SASIKUMAR K.S., AGED 45,
S/O SIVARAMA MENON, RESIDING AT KOROTH HOUSE,
IRIMPANAM P.O., THIRUVANKULAM VILLAGE,
THRIPUNITHURA, ERNAKULAM.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.SUNIL NAIR PALAKKAT

RESPONDENTS: STATE/COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BENEDICT GEORGE PAPPARA
RESIDING AT 1024/111, SECTOR-I, CGS COLONY,
ANTOP HILL, MUMBAI-400 037.

BY P.P. SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 749 OF 2007

Dated this the 23rd day of March, 2007

ORDER

The petitioner is the 4th accused in a prosecution under Sec.138 of the Negotiable Instruments Act. The 1st accused – a limited company, is the drawer of the cheque. The petitioner is not one who has signed the cheque. The petitioner is sought to be roped with the help of Sec.141 of the N.I. Act. The learned counsel for the petitioner relying on the decision in **S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla & Another** ((2005) 8 SCC 89) urges a contention that the cognizance taken against the petitioner is not justified. He therefore prays that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings.

2. In para-1 of the complaint vital averments having bearing/reflection on the complicity of the petitioner are raised. Para-1 of the complaint reads as follows:

> "1. The 1st accused is the company; accused No.2 is the Chairman. 3 to 7 Directors of the 1st accused company. The company is doing varieties of businesses. Accused numbers 2 to 7 are in charge of the affairs of the 1st accused and are actively participating in all the day-to-day affairs of the company. The company issued cheque for an amount of Rs.18,750/- (Eighteen Thousand Seven Hundred and Fifty only) to the complainant."

3. There is a clear averment that the petitioner was in charge of the affairs of the company and was actively participating in all the day-to-day affairs of the company. Of course, as rightly pointed out by the learned counsel, except this averment, there is no material whatsoever other than the affidavit sworn to by the complainant in support of the allegations raised against the petitioner. But, such a contention appears to be not available to the petitioner in view of the declaration of law in **Mymoonath Beevi v. State of Kerala (**2005 (4) KLT 174). The earlier view taken in **Biju Jacob v. Annie Mathew** (2004 (2) KLT 634) was overruled by the

Division Bench and it was held that it was not necessary to look for anything more at the threshold when there is an averment satisfying the mandate of Sec.141 of the N.I. Act. The said decision is not challenged and I am, in these circumstances, of opinion that there is no merit in the prayer for quashing of the proceedings against the petitioner – the 4th accused.

4. The learned counsel for the petitioner submits that if unnecessary insistence were made on the personal appearance of the petitioner, the petitioner who really has nothing to do with the activities of the company and who is permanently residing at Chennai will be put to very great hardship and loss.

5. I find no reason why any court must insist on the personal appearance of an accused like the petitioner who is only, even allegedly, a Director liable under Sec.141 of the N.I. Act. The trial can really be held without insisting on the personal appearance of the petitioner at any stage. Even at the time of issuing summons, the powers under Sec.205 of the Cr.P.C. can be invoked and the indictee can be permitted to appear through pleader. Alternatively, his personal appearance can be dispensed with under Sec.317 of the IPC also. Even 313 examination can be dispensed with with the aid of the proviso to

Sec.313(1) of the Cr.P.C. The courts have to actively ensure that the criminal adjudicatory process is not used as a method of oppression. I can find absolutely no reason why an indictee cannot face prosecution in an offence under Sec.138 of the N.I. Act without personally appearing before the court concerned. Of course, if there are compelling reasons, the learned Magistrate can always after showing the reasons direct that the accused must appear in persons.

6. This Crl.M.C. is, in these circumstances, dismissed; but with the above observations.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge